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SENATE

REPORT
99-188

DECLARING THAT THE UNITED STATES HOLDS CERTAIN CHILOCCO INDIAN SCHOOL LANDS IN TRUST FOR THE KAW, OTOE-MISSOURIA, PAWNEE, PONCA, AND TONKAWA INDIAN TRIBES OF OKLAHOMA

NOVEMBER 18, 1985.—Ordered to be printed

Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1684]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1684) to declare that the United States holds certain Chilocco Indian School lands in trust for the Kaw, Otoe-Missouria, Pawnee, Ponca, and Tonkawa Indian Tribes of Oklahoma, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

Strike out all after the enacting clause and insert the following:

SECTION 1. (a) Except as provided in section 2 of this Act, the Secretary of the Interior shall partition the interests of the United States in the approximately 5,824 acres of land in Oklahoma known as the Chilocco Indian School Reserve among the Cherokee Nation of Oklahoma, and the Pawnee, Ponca, Otoe-Missouria, Kaw, and Tonkawa Tribes of Oklahoma in line with the agreement of August 30, 1985 among those six tribes. The interests which are partitioned to the last five named tribes jointly shall be further partitioned by the Secretary in line with an agreement among those tribes.

(b) The interests partitioned to a tribe under this section are declared to be held in trust by the United States for that tribe.

(c) The Secretary shall publish in the Federal Register a description of the interests in land partitioned and held in trust under this section.

SEC. 2. The interest of the United States in the minerals in the approximately 5,824 acres of land identified in section 1 of this Act are declared to be held in trust jointly for the Cherokee Nation of Oklahoma, and the Pawnee, Ponca, Otoe-Missouria, Kaw, and Tonkawa Tribes of Oklahoma. The Cherokee Nation of Oklahoma shall act for all six tribes in decisions involving those mineral interests. The Secretary shall hold 50 percent of the income from those mineral interests in trust for the Cherokee Nation of Oklahoma and 10 percent of that income in trust for each of the other five tribes.

SEC. 3. Nothing in this Act shall deprive any person of any right or interest in the land identified in section 1.

SEC. 4. The unobligated balance of the income (after provision for payment of maintenance and other costs incurred before the enactment of this Act) derived by

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the Secretary from the interests in the land identified in section 1 of this Act shall be used in accordance with the provision from the Act of September 10, 1982 (96 Stat. at 839) codified in section 155b of title 25, United States Code (1982 Edition) and divided as follows:

(1) of the part of the balance that the Secretary decides is attributed to income from other than mineral interests—

(A) 75 percent shall be used as jointly requested by the governing bodies of the Pawnee, Ponca, Otoe-Missouria, Kaw, and Tonkawa Tribes of Oklahoma; and

(B) 25 percent shall be used as requested by the governing body of the Cherokee Nation of Oklahoma.

(2) of the part of the balance that the Secretary decides is attributed to income from mineral interests—

(A) 50 percent shall be used as jointly requested by the governing bodies of the Pawnee, Ponca, Otoe-Missouria, Kaw, and Tonkawa Tribes of Oklahoma; and

(B) 50 percent shall be used as requested by the governing body of the Cherokee Nation of Oklahoma.

PURPOSE

The purpose of the legislation is to authorize the transfer of land and mineral interest in the Chilocco Indian School reserve to the Kaw, Otoe-Missouria, Pawnee, Ponca and Tonkawa Tribes, and the Cherokee Nation of Oklahoma.

BACKGROUND

The Chilocco Indian School land was originally given to the Cherokee Nation of Oklahoma pursuant to the Treaty of May 6, 1828. The United States, under provisions of the treaty, guaranteed 7 million acres of land to the Cherokee Nation of Oklahoma in what was known as the Indian Territory. An additional 6.5 million acres west of this area, known as the Cherokee Outlet was also held in trust for the tribe under provisions of this agreement.

After the enactment of the 1828 Treaty, Congress then authorized the President to assure the Cherokee Nation title to such lands and to execute a patent on these lands. Later on, after the removal of the Tribes to the new lands, Congress authorized the Secretary to construct and establish Indian industrial schools in the Indian Territory pursuant to the Act of May 17, 1882. Chilocco Indian School was subsequently established at Section 15, Township 29N, Range E, Indian Meridian line within the Cherokee outlet. Then by Executive Order issued July 12, 1884, the Chilocco Indian School lands, also referred to as the Chilocco Reserve, were increased to include twelve (12) additional sections of land and portions of three (3) other sections. In 1889, the Cherokee Nation and the United States entered into an agreement (the Act of March 2, 1889) whereby the Tribe conveyed to the United States all of its rights in the so called Cherokee outlet, which included the Chilocco Reserve. These lands then became the property of the United States.

On June 15, 1980, the Chilocco Indian School was closed and the land became surplus property. Soon after, the Cherokee Nation requested that the land be transferred to the tribe under Public Law 93-599 (40 U.S.C. 483(a)(2)), which provides for the transfer of surplus Indian land. In turn, the Kaw, Otoe-Missouria, Pawnee, Ponca and Tonkawa Tribes, who sought land for economic development

purposes, requested that portions of the surplus Chilocco Reserve be transferred to them.

The Department of the Interior, Bureau of Indian Affairs, determined that the property which consists of approximately 5,824 acres, more or less, is subject to the above quoted provisions of 40 U.S.C. 483 (a)(2)) and that the Cherokee Nation is the eligible recipient of the property, since the property is within the former Cherokee Reservation boundary and that at the time it was acquired by the United States, it was held in trust for the Cherokee Nation of Oklahoma. While the Cherokee Nation is entitled to the whole of the property, the Cherokee Nation and the Kaw, Otoe-Missouria, Pawnee, Ponca and Tonkawa Tribes of Oklahoma entered into an agreement on August 30, 1985 which would allow the division of the school lands among the six tribes.

While administrative authority exists to transfer the property to the Cherokee Nation, Congressional approval is required in order for the property to be divided among the six tribes. S. 1684, as amended in the nature of a substitute, authorizes the Secretary of the Interior to divide and hold the Chilocco School property in trust for the Cherokee Nation of Oklahoma, the Pawnee, Kaw, Otoe-Missouria, Ponca, and Tonkawa Tribes of Oklahoma pursuant to the terms and conditions of the agreement reached by the six tribes on August 30, 1985.

LEGISLATIVE HISTORY

S. 1684 was introduced by Senator Nickles, for himself and Senator Boren, on September 20 (legislative day, September 16), 1985, and referred to the Select Committee on Indian Affairs, which held a hearing on the bill on October 23, 1985. S. 1684 was marked up and ordered reported out of the Select Committee on November 7, 1985. An identical companion bill, H.R. 3623, was introduced on October 24, 1985.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business section on November 7, 1985, with a quorum present recommends by a unanimous vote that the Senate pass S. 1684, as amended.

SECTION-BY-SECTION ANALYSIS

Section 1.—Provides for the Secretary of the Interior to partition the approximately 5,824 acres of land in Oklahoma known as the Chilocco Indian School Reserve among the Cherokee Nation of Oklahoma, and the Pawnee, Ponca, Otoe-Missouria, Kaw, and Tonkawa Tribes of Oklahoma pursuant to the agreement of the six tribes entered into on August 30, 1985. Such interest partitioned to the named tribes shall be held in trust by the United States for each of the named tribes. And the Secretary shall publish in the Federal Register a description of the interests in land partitioned and held in trust.

Section 2.—Provides that the interest of the United States in the minerals in the land described in section 1 are to be held in trust jointly for the Cherokee Nation of Oklahoma, and the Pawnee,

Ponca, Otoe-Missouria, Kaw, and Tonkawa Tribes of Oklahoma. The Cherokee Nation of Oklahoma shall act for all six tribes in decisions involving these mineral interests. Furthermore, the Secretary shall hold 50 percent of the income from those mineral interests in trust for the Cherokee Nation of Oklahoma and 10 percent of that income in trust for each of the other five tribes.

Section 3.—Nothing in this Act shall deprive any person of any right or interest in the land identified in section 1.

Section 4.—Provides for the use of income derived from the land described in section 1.

COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 1684, as amended, as provided by the Congressional Budget Office, is outlined below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 12, 1985.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1684, a bill to declare that the United States holds certain Chilocco Indian School lands in trust for the Kaw, Otoe-Missouria, Pawnee, Ponca, and Tonkawa Indian Tribes of Oklahoma, as amended and ordered reported by the Senate Select Committee on Indian Affairs, November 7, 1985.

We estimate that enactment of this bill would result in no additional costs to the federal government or to state or local governments. Under current law, authority already exists for the transfer of this land to the Cherokee Nation. Under the auspices of the Bureau of Indian Affairs, the Cherokee Nation reached an agreement with the five tribes listed above concerning division of these lands among the six tribes. This bill would implement that agreement.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

ERIC HANUSHEK,
(For Rudolph G. Penner, Director).

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of the Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1684, as amended, will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee has not received any correspondence from the Executive Branch. However, the Department of Interior, through

the Acting Deputy Assistant Secretary for Indian Affairs, testified at the Committee's hearing on S. 1684, as set forth below:

STATEMENT OF HAZEL E. ELBERT, ACTING DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I am pleased to appear before the Committee today to present the views of the Department of the Interior on S. 1684, a bill "To declare that the United States holds certain Chilocco Indian School lands in trust for the Kaw, Otoe-Missouria, Pawnee, Ponca, and Tonkawa Indian Tribes of Oklahoma."

We would support enactment of S. 1684 if amended as suggested herein.

S. 1684 is based on the presumption that the Secretary holds the Chilocco school property in trust for the Cherokee Nation pursuant to the authority contained in Public Law 93-599 (40 U.S.C. 483(a)(2)) which reads:

> (2) The Administrator shall prescribe such procedures as may be necessary in order to transfer without compensation to the Secretary of the Interior excess real property located within the reservation of any group, band, or tribe of Indians which is recognized as eligible for services by the Bureau of Indian Affairs. Such excess real property shall be held in trust by the Secretary for the benefit and use of the group, band, or tribe of Indians, within whose reservation such excess real property is located: *Provided,* that such transfer of real property within the State of Oklahoma shall be made to the Secretary of the Interior to be held in trust for Oklahoma Indian Tribes recognized by the Secretary of the Interior when such real property (1) is located within boundaries of former reservations in Oklahoma as defined by the Secretary of Interior and when such real property was held in trust by the United States for an Indian tribe at the time of acquisition by the United States, or (2) is contiguous to real property presently held in trust by the United States for an Oklahoma Indian tribe and was at any time held in trust by the United States for an Indian tribe.

Because the conveyance has not yet been made, we recommend that the bill be amended to declare that the property be held by the Secretary of the Interior in trust for the named tribes and further, to authorize the Secretary to partition the property in accordance with the agreement reached between the named tribes on August 30, 1985.

By way of a background on the history of the property; in 1882 the Congress authorized the Secretary of the Interior to construct an Indian industrial school near the Pawnee and Ponca Indian Reservations within the Cherokee Outlet. By Executive Order in 1884, President Arthur substantially increased the boundaries of the school property. The purpose of the expansion was to allow "for the settlement of such friendly Indians belonging within the Indian Territory as have been or who may hereafter be educated at Chilocco Industrial School."

Under authority of section 14 of the Act of March 2, 1889, an agreement was entered into between the Cherokee Nation and the United States in which the Tribe conveyed all of its right, title, and interest in the Cherokee Outlet, consisting of over 8 million acres, to the United States. The agreement was approved by the Cherokee Nation Council on January 4, 1892 and ratified by the Congress pursuant to section 10 of the Act of March 3, 1893. As a result, the lands formerly known as the Cherokee Outlet, including the Chilocco Reserve, became the property of the United States. However, the Chilocco Reserve was not opened to public settlement. Section 10 of the Act of March 3, 1893 expressly excepted the Chilocco Reserve from public settlement "until further action of Congress".

In 1980 Congress prohibited the use of appropriated funds to finance academic and residential programs at the Chilocco School, and the Conferees on the Department of the Interior and Related Agencies Appropriation Act of 1983 directed the Bureau of Indian Affairs to dispose of the remaining three boarding schools which had been closed, including Chilocco (H. Rept. No. 97-978, 97th Congress, 2d Session).

We have determined that the property which consists of approximately 5,824 acres, more or less, is subject to the above quoted provisions of 40 U.S.C. 483(a)(2)) and that the Cherokee Nation is the eligible recipient of the property, since the property is within the former Cherokee Reservation boundary and that at the time it was acquired by the United States, it was held in trust for the Cherokee Nation. While the Cherokee Nation is entitled to the whole of the property, the aforementioned agreement between the Cherokee Nation and the five tribes evidences the Cherokees' desire to share the use and benefit of the property with the five tribes.

In view of the long-standing interest in the property possessed by the Cherokee Nation of Oklahoma and of the contemplated equitable transfer of parts of the property to the other five tribes, it is appropriate for the property to be conveyed to the tribes under the Federal policy embodied in 40 U.S.C. 483(a)(2).

While requisite administrative authority exists to transfer the property to the Cherokee Nation, Congressional approval is necessary in order for the property to be divided among the six tribes. We, therefore, recommend that S. 1684 be amended to provide the Secretary of the Interior authority to divide and hold the Chilocco School property in trust for the Cherokee Nation of Oklahoma, the Pawnee, Kaw, Otoe-Missouria, Ponca, and Tonkawa Tribes of Oklahoma in line with the terms and conditions of the agreement reached between the said tribes on August 30, 1985. We also recommend that Section 5 be amended to make clear that all rents, royalties, grazing fees, and other income derived from the Chilocco property which have accrued after the date of enactment shall be held in trust for the named tribes. The funds which have accrued prior to the date of enactment are Federal funds and would not be affected.

Finally, in order to avoid clerical errors in the printing, we recommend that the land descriptions be deleted from S. 1684 and instead we recommend that the bill require the legal description be published by the Secretary in the Federal Register. Also, we recommend that the bill merely incorporate by reference the tribal parti-

tion agreement of August 30, 1985, in lieu of citing portions of the terms of the agreement in the current bill.

This concludes my prepared statement. I would now be happy to answer any questions the Committee may have.

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